

Senate File 2260 - Introduced

SENATE FILE 2260
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3126)

A BILL FOR

1 An Act revising the Iowa nonprofit corporation Act.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 504.141, Code 2011, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 11A. "*Domestic unincorporated entity*" means
4 an unincorporated entity whose internal affairs are governed by
5 the laws of this state.

6 NEW SUBSECTION. 17A. "*Foreign unincorporated entity*" means
7 an unincorporated entity whose internal affairs are governed by
8 an organic law of a jurisdiction other than this state.

9 NEW SUBSECTION. 25A. "*Organic law*" means a statute
10 principally governing the internal affairs of a domestic
11 or foreign business corporation, nonprofit corporation, or
12 unincorporated entity.

13 NEW SUBSECTION. 25B. "*Organic record*" means a public
14 organic record or private organic record.

15 NEW SUBSECTION. 27A. "*Private organic record*" means any
16 record, other than a public organic record, if any, that
17 determines the internal governance of an unincorporated entity.
18 Where a private organic record has been amended or restated,
19 "*private organic record*" means the private organic record as
20 last amended or restated.

21 NEW SUBSECTION. 29A. "*Public organic record*" means the
22 record, if any, that is filed of public record, to create an
23 unincorporated entity. Where a public organic record has been
24 amended or restated, "*public organic record*" means the public
25 organic record as last amended or restated.

26 NEW SUBSECTION. 29B. "*Record*" means information that
27 is inscribed on a tangible medium or that is stored in an
28 electronic or other medium and is retrievable in perceivable
29 form.

30 NEW SUBSECTION. 34A. a. "*Unincorporated entity*" means an
31 organization or other legal entity that is not a corporation
32 and that either has a separate legal existence or has the power
33 to acquire an estate in real property in the entity's own name.
34 "*Unincorporated entity*" includes a general partnership, limited
35 liability company, limited partnership, business or statutory

1 trust, joint stock association, and unincorporated nonprofit
2 association.

3 *b.* "Unincorporated entity" does not include a domestic
4 or foreign business corporation, a nonprofit corporation, an
5 estate, a trust, a governmental subdivision, a state, the
6 United States, or a foreign government.

7 Sec. 2. Section 504.141, subsection 15, Code 2011, is
8 amended to read as follows:

9 15. "Entity" includes a ~~corporation and foreign corporation,~~
10 ~~business corporation and~~ domestic or foreign business
11 ~~corporation; limited liability company and~~ domestic or foreign
12 ~~limited liability company; profit and nonprofit unincorporated~~
13 ~~association; corporation sole; business trust,~~ domestic or
14 foreign unincorporated entity; estate, ~~partnership,~~ ; trust,
15 ~~and two or more persons having a joint or common economic~~
16 ~~interest; and;~~ state; the United States, ~~and;~~ governmental
17 subdivision; and foreign government.

18 Sec. 3. Section 504.622, Code 2011, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 01. A membership in a public benefit or
21 mutual benefit corporation may be terminated or suspended for
22 the reasons and in the manner provided in the articles of
23 incorporation or bylaws.

24 Sec. 4. Section 504.622, subsection 1, Code 2011, is amended
25 to read as follows:

26 1. A To the extent the articles of incorporation or bylaws
27 do not address the termination or suspension of a member, a
28 member of a public benefit or mutual benefit corporation shall
29 not be expelled or suspended, and a membership or memberships
30 in such a corporation shall not be terminated or suspended
31 except pursuant to a procedure which is fair and reasonable and
32 is carried out in good faith.

33 Sec. 5. Section 504.701, Code 2011, is amended by adding the
34 following new subsection:

35 NEW SUBSECTION. 7. The articles of incorporation or

1 bylaws may provide that an annual or regular meeting of
2 members is not required to be held at a geographic location
3 if the meeting is held by means of the internet or other
4 electronic communications technology in a manner pursuant to
5 which the members have the opportunity to read or hear the
6 proceedings substantially concurrent with the occurrence of the
7 proceedings, vote on matters submitted to the members, pose
8 questions, and make comments.

9 Sec. 6. Section 504.702, Code 2011, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 6. The articles of incorporation or bylaws
12 may provide that a special meeting of members is not required
13 to be held at a geographic location if the meeting is held
14 by means of the internet or other electronic communications
15 technology in a manner pursuant to which the members have the
16 opportunity to read or hear the proceedings substantially
17 concurrent with the occurrence of the proceedings, vote on
18 matters submitted to the members, pose questions, and make
19 comments.

20 Sec. 7. NEW SECTION. 504.709 **Conduct of meetings.**

21 1. At each meeting of members, an individual shall preside
22 as chair. The chair shall be appointed as follows:

23 a. As provided in the articles of incorporation or bylaws.

24 b. In the absence of a provision in the articles of
25 incorporation or bylaws, by the board of directors.

26 c. In the absence of both a provision in the articles of
27 incorporation or bylaws and an appointment of the chair by the
28 board, by the members at the meeting.

29 2. Except as provided in the articles of incorporation or
30 bylaws, the chair shall determine the order of business and
31 shall have the authority to establish rules for the conduct of
32 the meeting.

33 3. Any rules adopted for, and the conduct of, the meeting
34 shall be fair to the members.

35 4. The chair of the meeting shall announce at the meeting

1 when the polls close for each matter voted upon. If no
2 announcement is made, the polls shall be deemed to have closed
3 upon the final adjournment of the meeting. After the polls
4 are closed, no ballots, proxies, or votes, or any otherwise
5 permissible revocations or changes thereto may be accepted.

6 Sec. 8. NEW SECTION. 504.719 **Inspectors of election.**

7 1. A corporation with members may appoint one or more
8 inspectors to act at a meeting of members and to make a report
9 in the form of a record of the inspectors' determinations.

10 Each inspector shall execute the duties of inspector
11 impartially and according to the best of the inspector's
12 ability.

13 2. The inspectors shall do all of the following:

14 a. Ascertain the number of members and their voting power.

15 b. Determine the members present at the meeting.

16 c. Determine the validity of proxies and ballots.

17 d. Count all votes.

18 e. Determine the result of the voting.

19 3. An inspector may, but is not required to, be a director,
20 member of a designated body, member, officer, or employee of
21 the corporation. A person who is a candidate for an office
22 to be filled at the meeting shall not be an inspector at that
23 meeting.

24 Sec. 9. Section 504.801, subsection 2, Code 2011, is amended
25 to read as follows:

26 2. Except as otherwise provided in this chapter or
27 subsection 3, all corporate powers shall be exercised by or
28 under the authority of, and the affairs of the corporation
29 managed under the direction of, and subject to the oversight
30 of, its board of directors.

31 Sec. 10. Section 504.826, Code 2011, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 7. A corporation may create or authorize
34 the creation of one or more advisory committees whose members
35 are not required to be directors. An advisory committee is not

1 a committee of the board of directors and shall not exercise
2 any powers of the board.

3 Sec. 11. Section 504.831, Code 2011, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 2A. In discharging board or committee
6 duties, a director must disclose, or cause to be disclosed, to
7 the other board or committee members, information not already
8 known by them, but known by the director to be material to the
9 discharge of the decision-making or oversight functions of the
10 board or committee, except that such disclosure is not required
11 to the extent that the director reasonably believes that doing
12 so would violate a duty imposed by law, a legally enforceable
13 obligation of confidentiality, or a professional ethics rule.

14 Sec. 12. Section 504.831, subsection 5, paragraph c, Code
15 2011, is amended to read as follows:

16 c. A committee of the board or advisory committee of
17 which the director is not a member, as to matters within
18 ~~its~~ the committee's or advisory committee's jurisdiction, if
19 the director reasonably believes the committee or advisory
20 committee merits confidence.

21 Sec. 13. NEW SECTION. 504.836 **Business opportunities.**

22 1. A director's taking advantage, directly or indirectly,
23 of a business opportunity shall not be the subject of equitable
24 relief, or give rise to an award of damages or other sanctions
25 against the director, in a proceeding by or in the right of a
26 corporation on the ground that such opportunity should have
27 first been offered to the corporation, if before becoming
28 legally obligated respecting the business opportunity, the
29 director brings the opportunity to the attention of the
30 corporation and action is taken by the directors, a committee
31 of the directors, or the members disclaiming the corporation's
32 interest in the opportunity in compliance with the procedures
33 set forth in section 504.833, as if the decision being made
34 concerned a conflict of interest transaction.

35 2. In any proceeding seeking equitable relief or other

1 remedy, based upon an alleged improper taking advantage of a
2 business opportunity by a director, the fact that the director
3 did not employ the procedure described in subsection 1 before
4 taking advantage of the opportunity shall not create an
5 inference that the opportunity should have first been presented
6 to the corporation, or alter the burden of proof otherwise
7 applicable to establish that the director breached a duty to
8 the corporation under the circumstances.

9 Sec. 14. Section 504.843, Code 2011, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 1A. The duties of an officer include the
12 obligation to inform the specified persons of the following:

13 a. The superior officer to whom or the board of directors
14 or the committee of the board to which the officer reports, of
15 information about the affairs of the corporation known to the
16 officer, within the scope of the officer's functions, and known
17 to the officer to be material to the superior officer, board,
18 or committee.

19 b. The officer's superior officer, or another appropriate
20 person within the corporation, or the board of directors, or
21 a committee of the board, of any actual or probable material
22 violation of law involving the corporation or any material
23 breach of duty to the corporation by an officer, employee,
24 or agent of the corporation, that the officer believes has
25 occurred or is likely to occur.

26 Sec. 15. Section 504.1101, subsection 1, Code 2011, is
27 amended to read as follows:

28 1. Subject to the limitations set forth in section 504.1102,
29 one or more nonprofit corporations may merge with or into any
30 one or more business corporations or nonprofit corporations or
31 ~~limited liability companies~~ unincorporated entities, if the
32 plan of merger is approved as provided in section 504.1103.

33 Sec. 16. Section 504.1101, subsection 2, paragraphs a, c,
34 and d, Code 2011, are amended to read as follows:

35 a. The name of each corporation or ~~limited liability company~~

1 unincorporated entity planning to merge and the name of the
2 surviving corporation into which each plans to merge.

3 c. The manner and basis, if any, of converting the
4 memberships of each public benefit or religious corporation
5 into memberships of the surviving corporation or ~~limited~~
6 ~~liability company~~ unincorporated entity.

7 d. If the merger involves a mutual benefit corporation,
8 the manner and basis, if any, of converting memberships of
9 each merging corporation into memberships, obligations, or
10 securities of the surviving or any other corporation or ~~limited~~
11 ~~liability company~~ unincorporated entity or into cash or other
12 property in whole or in part.

13 Sec. 17. Section 504.1101, subsection 3, paragraph a, Code
14 2011, is amended to read as follows:

15 a. Any amendments to the articles of incorporation or bylaws
16 of the surviving corporation or ~~limited liability company~~
17 organic record of the surviving unincorporated entity to be
18 effected by the planned merger.

19 Sec. 18. Section 504.1102, subsection 1, paragraph d,
20 unnumbered paragraph 1, Code 2011, is amended to read as
21 follows:

22 A business or mutual benefit corporation or ~~limited~~
23 ~~liability company~~ an unincorporated entity, provided that all
24 of the following apply where the public benefit or religious
25 corporation is not the surviving entity in the merger:

26 Sec. 19. Section 504.1102, subsection 1, paragraph d,
27 subparagraph (2), Code 2011, is amended to read as follows:

28 (2) The business or mutual benefit corporation or ~~limited~~
29 ~~liability company~~ unincorporated entity shall return, transfer,
30 or convey any assets held by it upon condition requiring
31 return, transfer, or conveyance, which condition occurs by
32 reason of the merger, in accordance with such condition.

33 Sec. 20. Section 504.1106, subsection 1, Code 2011, is
34 amended to read as follows:

35 1. Except as provided in section 504.1102, one or more

1 own name. An "unincorporated entity" includes specified
2 types of legal entities that are not corporations. An
3 "unincorporated entity" also does not include an estate, a
4 trust, a governmental subdivision, a state, the United States,
5 or a foreign government. There are also definitions for a
6 "domestic unincorporated entity" whose affairs are governed
7 by Iowa law and for a "foreign unincorporated entity" whose
8 affairs are governed by the law of another jurisdiction.

9 Code section 504.622 is amended to provide that membership
10 in a public benefit or mutual benefit corporation may be
11 terminated or suspended as provided in the articles of
12 incorporation or bylaws and to the extent that those items do
13 not address such a termination or suspension, the procedure
14 must be carried out in good faith in a manner which is fair and
15 reasonable.

16 Code sections 504.701 and 504.702 are amended to allow a
17 nonprofit corporation with members to hold an annual or regular
18 meeting or a special meeting by means of the internet or other
19 electronic communications technology so long as members have
20 the opportunity to read or hear the proceedings substantially
21 concurrent with the occurrence of the proceedings and can vote,
22 pose questions, and make comments.

23 New Code section 504.709 requires that an individual preside
24 as chair at each meeting of corporate members as provided in
25 the articles of incorporation or bylaws, as appointed by the
26 board, or as appointed by members at the meeting. Unless
27 otherwise provided by the articles or bylaws, the chair shall
28 determine the order of business and establish rules for the
29 conduct of the meeting.

30 New Code section 504.719 allows a nonprofit corporation with
31 members to appoint one or more inspectors to assist with voting
32 at the meeting and make a report of their determinations and
33 the results of the vote.

34 Code section 504.801 is amended to provide that corporate
35 powers shall be exercised by or under the authority of, and the

1 affairs of the corporation shall be managed under the direction
2 and subject to the oversight of, the board of directors.

3 Code section 504.826 is amended to provide that a nonprofit
4 corporation can create or authorize the creation of one or
5 more advisory committees whose members are not required to be
6 directors of the corporation. Such an advisory committee is
7 not a committee of the board and cannot exercise any powers of
8 the board.

9 Code section 504.831 is amended to provide that in
10 discharging board or committee duties a corporate director
11 must disclose information to the other board or committee
12 members that is not known to them but known by the director to
13 be material to their decision-making or oversight functions,
14 except when such disclosure would violate a legal duty,
15 a legally enforceable obligation of confidentiality, or a
16 professional ethics rule.

17 Code section 504.831 is also amended to allow a director to
18 rely on a committee of the board or an advisory committee of
19 which the director is not a member as to matters within the
20 committee or advisory committee's jurisdiction, if the director
21 reasonably believes the committee or advisory committee merits
22 confidence.

23 New Code section 504.836 provides that a director's taking
24 advantage, directly or indirectly, of a business opportunity
25 cannot be the subject of equitable relief or give rise to an
26 award of damages or other sanctions against the director, in
27 a proceeding by or in the right of a nonprofit corporation on
28 the ground that the business opportunity should have first
29 been offered to the corporation if before becoming legally
30 obligated on the business opportunity, the director brings the
31 opportunity to the attention of the corporation and action
32 is taken by the directors, a committee of the directors, or
33 the members disclaiming the corporation's interest in the
34 opportunity. This disclaimer must be made in compliance with
35 procedures set forth in Code section 504.833 for conflict of

1 interest transactions by directors. However, in an action
2 seeking equitable relief or other remedy based upon an alleged
3 improper taking advantage of such a business opportunity by a
4 director, the fact that the above procedure was not complied
5 with does not create an inference that the opportunity should
6 have been presented to the corporation or alter the burden
7 of proof necessary to establish a breach of duty to the
8 corporation by the director.

9 Code section 504.843 is amended to provide that a corporate
10 officer has the duty to provide information to specified
11 persons within the corporation about the affairs of the
12 corporation known to the officer to be material and about any
13 actual or probable material violation of law involving the
14 corporation or any material breach of duty to the corporation
15 by an officer, employee, or agent of the corporation.

16 Code section 504.1101 which applies to mergers of nonprofit
17 corporations with other entities, is amended to substitute
18 the newly defined term "unincorporated entity" for "limited
19 liability company". A limited liability company is now
20 encompassed within the definition of an "unincorporated
21 entity", which includes other types of entities as well. Also
22 the plan of merger may include amendments to the organic record
23 of the surviving unincorporated entity.

24 Code section 504.1102 is also amended to provide that when
25 a merger of a public benefit or religious corporation with a
26 business or mutual benefit corporation or unincorporated entity
27 will result in the public benefit or religious corporation not
28 surviving, certain conditions must be met.

29 Code section 504.1106 is amended to allow mergers between a
30 newly defined "foreign unincorporated entity" and a domestic
31 nonprofit corporation under specified conditions.